No. 86-337

In the Supreme Court of the United States

October Term, 1986

BURLINGTON NORTHERN
RAILROAD COMPANY,
Petitioner,

v.

OKLAHOMA TAX COMMISSION, et al.,
Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Tenth Circuit

BRIEF OF RESPONDENTS STATE BOARD OF EQUALIZATION OF THE STATE OF OKLAHOMA; GEORGE NIGH; SPENCER BERNARD; LEO WINTERS; JACK CRAIG; CLIFTON SCOTT; DR. LESLIE FISHER; AND MIKE TURPEN

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QUESTIONS PRESENTED

I.

Whether Congress, in enacting 49 U.S.C. § 11503, intended to confer subject matter jurisdiction upon federal district courts to hear claims of overvaluation of railroad property.

II.

Whether the language of 49 U.S.C. § 11503 is sufficiently clear with regard to valuation of railroad property to overcome the rule that the doctrine of comity bars federal intervention into a state taxation system.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitution, Statutes, and Rules

Page

Legislative Materials

Page

Other Authorities

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STATEMENT OF THE CASE

INTRODUCTION

The Attorney General of Oklahoma, Robert H. Henry, files this brief on behalf of the Respondents State Board of Equalization of the State of Oklahoma; George Nigh; Spencer Bernard; Leo Winters; Jack Craig; Clifton Scott; Dr. Leslie Fisher; and Mike Turpen, hereinafter referred to as "the State."

The primary issue before this Court is whether Section 306 of the 4-R Act[1] confers jurisdiction upon federal courts to consider railroad property valuation disputes. Changes in the federal-state balance are, however, not presumed, in the absence of clear legislative language indicating such an intent. Because no language in §306 clearly indicates an intent to confer railroad valuation jurisdiction upon federal courts, and because the Act's legislative history does not evi-

[1] Section 306 will be used throughout this brief to refer to 49 U.S.C. §11503.

dence such a clear intent, it is appropriate that this Court hold that Congress did not intend to alter the federal-state balance by conferring railroad valuation jurisdiction upon the federal courts. Such a ruling by this Court would be consistent with the general principles of federalism and comity.

In valuing railroad property for property tax purposes, the State of Oklahoma first determines the value of the entire railroad as a unit, "unit valuation," then apportions a percentage of that value to be used by the state for tax purposes.[2] In valuing railroads as a unit, the State uses a complex appraisal formula which encompasses considerations of two major factors: the railroad's original cost depreciated; and the railroad's capitalized income (Pet. App. 8a). Since 1976, the relative weight given each of these two major factors has changed, with more emphasis consistently being placed on capitalized income (*Id.* at 8a and 13a). As a result of this gradual change in emphasis,

[2] The Oklahoma process of local assessments requires three steps: (1) full value determination; (2) application of assessment ratio to determine assessed value; and (3) application of tax rate. *Cantrell v. Sanders*, 610 P.2d 227 (Okla. 1980). Local assessments are equalized at 12% with 3% deviation, or between 9% and 15%. *Poulos v. State Board of Equalization*, 646 P.2d 1269 (Okla. 1982).

[2] Railroad and public service corporation property assessments require five steps: (1) determination of system value; (2) application of allocation factor to determine Oklahoma value; (3) application of assessment percentage to determine assessed value; (4) apportionment to the various local taxing jurisdiction; and (5) application of the tax rate.

[2] An entity challenging its assessment may pursue administrative proceedings before the Equalization Board and may then obtain review of its decisions in the Oklahoma Supreme Court. *Tulsa Classroom Teachers Association v. State Board of Equalization*, 601 P.2d 99 (Okla. 1979); Okla. Stat. Ann. tit. 75, §§301- 326 (West 1976 & Supp. 1987).

[2] The Oklahoma Tax Commission is the state agency that assists the State Board of Equalization in both equalization of local assessments and valuation and assessment of railroad and public service corporation property. Okla. Stat. Ann. tit. 68, §§2454, 2255, and 2462 (West Supp. 1987).

and other factors, Burlington Northern's[3] annual assessment has fallen gradually, but consistently in every year since the current valuation system was adopted in 1976; in point of fact, as found by the trial court, the 1982 assessment was substantially less than the 1981 assessment, and indeed it was less than Burlington Northern's own assessment made in 1981 (Pet. App. 15a).

THE PROCEEDINGS BELOW

Taking exception to their 1982, and later, their 1983 assessment, Burlington Northern sought relief in the United States District Court for the Western District of Oklahoma. In seeking such relief, Burlington Northern had no real quarrel with, and did not challenge, the tax rate imposed, the assessment ratio used, nor the valuation of other industrial and commercial property by the Tax Commission (Pet. App. 23a-35a). That is, Burlington Northern had no real complaint with the State's equalization. Rather, the true gravamen of the complaint was a challenge of the method used by Oklahoma to value the railroad as a unit. *Id.*

The State filed a response, acknowledging the existence of a honest valuation dispute, and a Motion to Dismiss the Complaint, alleging a lack of subject matter jurisdiction under either Section 306 or 28 U.S.C. §1341 (J. A. 4 and 11-25).

The district court ordered Burlington Northern to file a statement of its jurisdictional facts in accordance with the holding in *Burlington Northern Railroad v. Lennen*, 715 F.2d 494 (10th Cir. 1983), *cert. denied*, 467 U.S. 1230 (1984) (J. A. 65-66). *Lennen* held that Section 306 does not confer jurisdiction upon the fed-

[3] The Petitioner, Burlington Northern Railroad Company will be referred to in this brief as "Burlington Northern." The Respondents, as noted previously, will be referred to as "the State" unless specificity is needed.

eral district courts to entertain an action concerning a pure railroad valuation dispute, unless the railroad can make a strong showing of purposeful overvaluation, with discriminatory intent. *Id.* at 498.

In response, Burlington Northern filed a Supplementary Brief and Statement of Facts in Opposition to Motions to Dismiss Filed by Defendants (J. A. 63-86). Burlington Northern contended that they were intentionally discriminated against because changes in the State's assessment process caused an increase in the State's valuation of Burlington Northern's property.

The district court dismissed the complaint for lack of subject matter jurisdiction under Section 306, 28 U.S.C. §1341, and *Lennen* (Pet. App. 7a-17a). In dismissing the case, the district court found that railroad property in Oklahoma is now assessed at the same assessment ratio that is used to assess other commercial and industrial property (Pet. App. 13a).

In holding that there had been no intentional discrimination by the State, the district court found that had the Oklahoma Tax Commission been motivated solely by a concern for raising revenue, the State could have chosen not to assess commercial and railroad property at exactly the same rate, since the 4-R Act permits higher assessment of railroads, as long as the difference in assessment ratio does not exceed a 5% (Pet. App. 15a). In holding that the Oklahoma Tax Commission (OTC) had not been motivated by a concern for keeping the railroads aggregate assessment up, the district court found that if the OTC had been so motivated, it could have

> eschewed the lower assessment ratio based on locally assessed commercial and industrial properties in favor of a higher assessment ratio, one which would take into account those properties which are centrally assessed. *In the interest of complying with the statute, the*

> *OTC scrupulously chose to adopt the more conservative approach, despite the fact that the more profitable alternative has been found to be consistent with §11503.*

(Pet. App. 15a). (Emphasis added).

The district court also found that Burlington Northern's annual assessment had gradually fallen each year since 1976, and that Burlington Northern's 1982 assessment was substantially less than its 1981 assessment (Pet. App. 15a). The district court found that the 1982 assessment was even less than Burlington Northern's own self-made assessment for 1981 (*Id.*).

In addressing the changes in procedure which Burlington Northern argued reflected an intent to intentionally overvalue, the district court found that the changes did not reflect such an intent:

> [T]he Court cannot agree that those changes reflect intentional discrimination against the railroads. *First*, the *utilization of a uniform assessment ratio* was mandated by federal statute and *in fact inured to the benefit of the railroads, as it brought a marked reduction in the assessment ratio* applied to railroad property. *Second*, the *change in weighting assigned to the valuation factors also benefitted the railroads, as by their own admission the railroads favor a valuation system based on capitalized income.* In 1982 greater weight was assigned to capitalized income than ever before. *Third*, the *decontinuation of assessment conferences*, while facially unfavorable to the railroads, *does not indicate intentional discrimination on the part of the Defendants.* The *conferences were discontinued as part of an effort to insure uniformity of treatment in valuation, a purpose furthered by removal of*

the inherent nonuniformity of the negotiation process with individual railroad representatives. Finally, the *deletion of economic obsolescence reductions* does not suggest discrimination, as the reductions *were also a product of individual negotiations. Although the absence of such a reduction might imply higher system value,* in any event, *the absence of the reduction does not imply higher system value in this case; despite the fact that no obsolescence reduction was allowed in 1982, Burlington Northern's Oklahoma value for 1982 was lower than that obtained with an obsolescence reduction in 1981.* Thus, the Court concludes that the changes made 1982 do not reflect intentional discrimination on the part of the Defendants against the Plaintiffs.

(Pet. App. 14a and 15a). (Emphasis added).

Finally, the district court held that since the Tenth Circuit in *Lennen* had decided that Congress, in enacting Section 306, "did not intend for the 'railroads to escape the general noninterference rule of [28 U.S.C.] § 1341. . . .' " (Pet. App. 10a), Burlington Northern "must therefore air their complaints concerning Oklahoma's valuation process in a forum provided by the State of Oklahoma." (Pet. App. 16a).

The Court of Appeals for the Tenth Circuit affirmed, holding that the issue was controlled by its previous decision in *Lennen,* and that "[w]ithout an express directive from Congress, we were unwilling to infer that it intended district courts to sit as state tax assessment boards for railroad property." (Pet. App. 2a).

The court also upheld the district court's finding that Burlington Northern failed to make an adequate showing of discriminatory intent, as required by *Lennen.* Upholding this finding, the Court of Appeals

noted that while the 1982 valuation figure used by the State was calculated differently as a part of a modified system of valuation, Burlington Northern's expert's proposed testimony merely established that there was a honest difference of opinion as to what the true market value was (Pet. App. 4a).

The court also noted that Burlington Northern had not alleged that it had been prevented from pursuing state administrative and court remedies to settle the valuation dispute (Pet. App. 5a, n. 1).

SUMMARY OF ARGUMENT

Federal court adjudication of state valuation of railroad property would significantly alter the balance in the relationship between the federal government and the various states. This Court has long recognized that taxes are the lifeblood of government and that their prompt and certain availability is an urgent and pressing need of the states. Federal court review of railroad property valuation will have a particularly disruptive effect on the federal-state balance, because of the complex, time-consuming litigation necessary to adjudicate such issues, which will further delay the collection of payment of taxes, and because of the inexact nature of railroad valuation, which leaves much room for honest judgment calls on the state's part.

In our federal system, Congress is not deemed to have significantly altered the federal-state balance unless it clearly expresses its intent to do so. The 4-R Act, in addressing many of the railroad's problems, including their local taxation problems, conferred jurisdiction upon the federal courts to consider tax equalization in order to prohibit discriminatory treatment. The Act contains no language, however, which expressly or directly confers jurisdiction upon the courts to consider railroad valuation disputes. Rather, any conclusion that the statute conferred

such jurisdiction must, of necessity, be based upon inference and extrapolation, not upon a clear expression of intention. Because no clear expression of intention is present, it is appropriate that this Court find in favor of the State's position that no railroad valuation jurisdiction was conferred, as substantial changes in the federal-state balance, such as federal court review of railroad property valuation, are not properly inferred.

This is particularly true in view of the express provision of 28 U.S.C. §1341, which, in sweeping language, prevents federal injunctive intrusion into the "assessment, levy, or collection of any tax" where there is an adequate state law remedy.

Even an examination of Section 306's lengthy, fifteen year, legislative history does not evidence clear intent by Congress to confer railroad valuation jurisdiction upon federal courts. Rather, the history contains repeated assurances by the railroads sponsoring the Act that railroad valuation was not a problem and that the proposed legislation did not address itself to such issues.

The vast majority of legislative history relied upon by Burlington Northern consists of statements made by opponents of the Act, or by opponents of portions of the Act. As this Court has noted and held on many occasions, in interpreting a statute, reliance upon the views of the legislative opponents is dangerous and inappropriate. In their zeal to defeat a bill, opponents understandably tend to overstate its reach. Accordingly, the doubts and fears of a bill's opponents are not appropriately considered in its interpretation.

Even if, however, this Court were to find that it was the intent of Congress that federal courts, under the 4-R act, have jurisdiction to consider discriminatory overvaluation of railroads, there is nothing in the

Act to suggest that Congress meant to depart from the federal common law which requires that overvaluation, to be discriminatory, must be the product of intent or fraud. As there is no clear intent to change the federal common law expressed, such a change is not appropriately found. While the district court's ruling on intent was consistent with this federal common law, the State finds no support for the trial court's holding that there was any jurisdiction vested in the district courts to consider railroad valuation issues.

The holding of the Tenth Circuit, that a federal district court has no jurisdiction to hear a valuation dispute unless the railroad makes a strong showing of a purposeful overvaluation with discriminatory intent, goes further than Section 306 and 28 U.S.C. §1341 permit in allowing challenges to the valuation process. However, the State contends that the Tenth Circuit was correct in upholding the dismissal of the complaint, since Burlington Northern had only presented allegations that established the existence of a legitimate question concerning the actual market value of its property, and there was no showing of discriminatory intent.

Finally, because Section 306 does not clearly give federal district courts jurisdiction to issue injunctions against a state tax collection agency regarding disputes between railroads and the states over the valuation of railroad property, the doctrine of comity bars the relief sought by Burlington Northern. This Court has long recognized the potential disruption involved in allowing federal injunctive intervention in the revenue raising process of a state.

In *Fair Assessment in Real Estate Association, Inc. v. McNary*, 454 U.S. 100 (1981), where the taxpayer sought relief from alleged unequal assessment of real property, this Court held that the doctrine of comity

barred an action for damages. Comity has always been an important aspect of federalism, and has prevented federal court intervention in a number of state functions.

Since taxation is one of the most vital functions of state government, and is essential to the existence and stability of such, federal injunctive interference in this process should be rare, and undertaken only pursuant to a clear grant of Congressional authorization.

Also, Burlington Northern has not contended that state administrative and court procedures for challenging valuation procedure are procedurally inadequate, or that it has been prevented from pursuing this process. In view of the complex and specialized nature of valuation of railroad property, the state administrative process is the appropriate forum for resolving valuation disputes.

PROPOSITION I

SECTION 306 DOES NOT EVIDENCE A CLEAR AND UNAMBIGUOUS INTENT TO EMPOWER FEDERAL COURTS TO ADJUDICATE AND DETERMINE THE ACCURACY OF A STATE'S VALUATION OF RAILROAD PROPERTY.

A. EMPOWERING FEDERAL COURTS TO ADJUDICATE STATE VALUATION OF RAILROAD PROPERTIES WOULD SIGNIFICANTLY ALTER THE BALANCE IN THE RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND STATES.

The Tax Injunction Act, 28 U.S.C. §1341, reflects the fundamental principle of comity between federal courts and state governments that is essential to our

federalism. *Fair Assessment in Real Estate Association v. McNary*, 454 U.S. 100, 103 (1981). As this Court noted in *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 522 (1981), the Tax Injunction Act was "first and foremost a vehicle to limit drastically federal court jurisdiction to interfere with so important a local concern as the collection of taxes." Indeed, this Court has recognized that "taxes are the life-blood of government, and their prompt and certain availability an imperious need." *Bull v. United States*, 295 U.S. 247, 259 (1935).

In his separate opinion in *Perez v. Ledesma*, 401 U.S. 82, 127, n. 17 (1971), Mr. Justice Brennan discussed some of the reasons justifying the policy of federal nonintervention in state tax collection, stating:

> The special reasons justifying the policy of federal noninterference with state tax collection are obvious. The procedures for mass assessment and collection of state taxes and for administration and adjudication of taxpayers' disputes with a tax official are generally complex and necessarily designed to operate according to established rules. State tax agencies are organized to discharge their responsibilities in accordance with the state procedures. If federal declaratory relief were available to test state tax assessments, state tax administration might be thrown into disarray, and taxpayers might escape the ordinary procedural requirements imposed by state law. During pendency of the federal suit the collection of revenue under the challenged law might be obstructed, with consequent damages to the State's budget, and perhaps a shift to the State of the risk of taxpayer insolvency.

Because the valuation of railroad property is, by its very nature, complex, technical, and time consum-

ing, the adjudication of valuation is itself time consuming, costly, and could long delay the collection of taxes. As such, federal court adjudication of railroad valuation would materially interfere with state tax collection and thus materially alter the balance in the relationship between the federal government and the states.

B. FEDERAL COURT REVIEW OF RAILROAD PROPERTY VALUATION IS PARTICULARLY DISRUPTIVE OF THE FEDERAL-STATE BALANCE, BECAUSE THE INEXACT NATURE OF RAILROAD VALUATION LEAVES MUCH ROOM FOR HONEST STATE JUDGMENT CALLS AND HONEST DISAGREEMENT.

In discussing the difficulty of determining the value of railroad property, this Court has noted that because of its special nature, valuation is hardly exact:

> But railroads, unlike farms and city lots and stocks and bonds, are not objects of exchange. The very notion of a "full cash value" for a railroad is in many respects artificial. See 1 Bonbright, The Valuation of Property, pp. 511-632. Whatever may be the pretense of exactitude in determining such a "value," to claim for it "scientific" validity, is to employ the term in its loosest sense.

Nashville Chattanooga & St. Louis Ry. v. Browning, 310 U.S. 362, 370 (1940).

In a similar vein, this Court has observed that the valuation of railroad property is a matter of judgment, which is certainly not a matter of arithmetical calculation:

> The ascertainment of the value of a railroad system is not a matter of arithmetical calculation and is not governed by any fixed and definite rate. Facts of great variety in number, estimates that are exact and those that are approximations, forecast based upon probabilities and contingencies have bearing and properly may be taken into account to guide judgment in determining what is the money equivalent — the actual value — of the property.

Rowley v. Chicago & Northwestern Ry., 293 U.S. 102, 109 (1934).

A review of the order of the United States District Court in *Burlington Northern Railroad v. Bair*, No. 83-100-A (S.D. Iowa July 16, 1986) (Pet. App. 43a-70a), demonstrates the present complexity, inexactitude and room for judgment in valuing railroad property. In that case, the court was called upon, among other things, to determine the validity of the weight the state gave each of three valuation methods: the capitalized earning method, the stock and bond method, and the depreciated cost method. Noting that the parties had significantly different opinions as to the proper way to use the stock and bond method, the court found that both methods require the exercise of considerable judgment on the part of the appraisers (Pet. App. 48a). The court was also called upon to review the state's judgments on treatment of various complex matters such as the state's assumption that the deferred taxes will continue to grow and actually never be paid back (Pet. App. 50a), the proper adjustment of the income stream to reflect terms of current liabilities (Pet. App. 52a), and whether the price/earning multiples used adequately reflected the investor's total interest in stock, including risk, growth, earnings, as well as other factors that may apply to a particular industry and a specific company (Pet. App. 53a).

Authorizing federal courts to review such judgment calls and take corrective action, if the court does not agree with such judgment, would constitute a sweeping change in the relationship between the state and federal government. Such marked changes in federal-state relations are generally not found to be present unless the intent of Congress to bring about such change is clearly stated.

C. CONGRESS WILL NOT BE DEEMED TO HAVE SIGNIFICANTLY CHANGED THE FEDERAL-STATE BALANCE, UNLESS IT CLEARLY EXPRESSES ITS INTENT TO DO SO.

In *United States v. Bass*, 404 U.S. 336, 349 (1971), this Court refused to broadly interpret a provision of the Omnibus Crime Control and Safe Streets Act, noting that a broad interpretation would significantly change the federal-state balance. This Court stated:

> There is a second principle supporting to day's result: unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance. . . . In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.

(Footnote omitted).

More recently, in *Bowen v. American Hospital Association*, ____U.S. ____, 106 S.Ct. 2101 (1986), this Court applied this principle in determining whether, under the Rehabilitation Act of 1973, a Department of Health and Human Services Regulation dealing with health care to handicapped infants was authorized. Finding that Congress expressed no clear intent to authorize federal supervision of treatment decisions traditionally entrusted to the state, this Court held that the regulation was unauthorized.

D. SECTION 306 DOES NOT EXPRESSLY OR DIRECTLY EMPOWER THE FEDERAL COURTS TO REVIEW THE STATE'S DETERMINATION OF A RAILROAD PROPERTY'S TRUE MARKET VALUE. ACCORDINGLY, A FEDERAL COURT'S POWER TO CONDUCT SUCH REVIEW WOULD, OF NECESSITY, HAVE TO BE BASED UPON INFERENCE AND EXTRAPOLATION. WHETHER SUCH INFERENCE OR EXTRAPOLATION WERE PROPER COULD ONLY BE DETERMINED BY EXAMINING BOTH THE STATUTORY LANGUAGE AND THE LEGISLATIVE HISTORY OF THE STATUTE.

In the case at hand, the statutory interpretation urged by Burlington Northern would have a significant impact on the federal-state balance in an area of prime importance to the State -- taxation. The interpretation urged by Burlington Northern is not based upon clear statutory language, but rather is based upon inferences and extrapolation. This is particularly true in light of the clear command of 28 U.S.C. §1341, which expressly states that federal district courts "shall not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under State law" unless the state court remedy is inadequate. It should require much more explicit statutory language than that in Section 306 to lead to a conclusion that Congress intended to put the federal courts in the business of reviewing state valuation of railroad property, which by its very nature is inexact and requires the State to make many judgment calls.

In Section 306(2), Congress vested the district courts of the United States with jurisdiction, without regard to the amount in controversy or citizenship of the parties, and notwithstanding the provisions of the Tax Injunction Act, to "grant it mandatory or prohibitive injunction relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate *any acts in violation of this section,*" and providing for various exceptions. (Emphasis added). Burlington Northern relies on three provisions in Section 306, in arguing that federal courts are empowered to review the state's valuation of railroad property:

1. The tax "ratio" provisions of subsection (1)(a);

2. The "burden of proof" provision of subsection (2)(d); and

3. The "any other tax" provision of subsection (1)(d).

Subsection (1)(a) prohibits property tax assessment of transportation property at a higher ratio to the true market value than the ratio which the assessed value of all the commercial and industrial properties, within the assessment jurisdiction, bears to the true market value of all such other commercial and industrial property. That is, subsection (1)(a) prohibits the property tax assessment of rail transportation property at a higher ratio than that used to assess all other commercial and industrial property in the same assessment jurisdiction.

Under the jurisdiction conferred by subsection (2), federal courts are thus required to compare the property tax assessment ratios (the percentage of true market value) at which the two categories of properties are assessed.[4]

The statute does not require or even speak of a review evaluation, or redetermination of rail transportation property valuations established by the State. Nor does the statute prescribe any means or methods of making such a redetermination. With respect to rail transportation property, the statute simply requires equalization of assessment ratios, not reevaluation or redetermination of value.

The statute's only reference to review of valuation is in the area of "other commercial and industrial property," the statute providing at subsection (2)(e) for the use of a random sampling method known as a "sales assessment ratio study," to be conducted "in accordance with statistical principles applicable to such studies.[5] Nowhere, however, does the statute establish the means for reviewing the value of rail transportation property.

Burlington Northern also argues that railroad valuation jurisdiction is conferred by virtue of the burden of proof provisions at Section 306(2)(d). The burden of proof provision at subsection (2)(d) simply provides that with respect to the determination of assessed and true market value, the burden of proof

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[4] In conferring such jurisdiction, subsection (2) lists the conditions under which relief may be granted, Congress providing at subsection (e) of the subsection, that no relief may be granted under the section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5% of the ratio of assessed true market value, with respect to all of the commercial industrial property in the same assessment jurisdiction.

[5] A "sales assessment ratio study" compares the assessed value to the *actual sale price for a representative* and statistically valid sample of property within the assessment jurisdiction. *See* International Association of Assessing Officers, *Improving Real Property Assessment,* 122-55 (1978). The use of "sales assessment ratio studies" while applicable to commercial and industrial property, which frequently changes hands in the market place, is not applicable to railroad property, because, as this Court has noted, "railroads, from like farms and city lots and stocks and bonds, are not objects of exchange." *Nashville Chattanooga & St. Louis Ry. v. Browning,* 310 U.S. at 370.

shall be "that declared by the applicable State law." Burlington Northern's argument is that if the valuation of railroad property were not an issue to be determined independently by the federal courts, there would have been no reason for Congress to proscribe a burden of proof (Pet. at 18). As has already been noted, while review of the valuation of railroad property is not addressed by the statute, review of valuation of other "commercial and industrial property," by means of a "sales assessment ratio study," is contemplated by the statute. The burden of proof provision established the burden with respect to "other commercial and industrial property." Accordingly, Burlington Northern's argument that there would be no reason for Congress to have addressed the burden of proof, with respect to market and assessed value, unless railroad property valuation was an issue, is simply ill-founded, as the burden of proof provision is clearly applicable to issues related to "other commercial and industrial property."

Subsection (1)(d) of Section 306 prohibits the imposition of "any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part." Burlington Northern argues that Congress, in enacting this catchall provision, recognized the possibility of other methods of tax discrimination, implying that any discrimination in the valuation of railroad property would be covered under this provision, and therefore, subject to federal court jurisdiction (Pet. Br. at 17). Contrary to what Burlington Northern suggests, subsection (1)(d) does not prohibit every possible method of discrimination; it prohibits *other* taxes which discriminate. That is, the "any other tax" language encompasses other tax *not referred to in the three preceding subsections,* subsections (a), (b), and (c), all of which relate to ad valorem assessment and taxation of property. The catchall provision was meant to include other forms of tax-

ation, such as license taxes, gross receipt taxes and excise taxes.

In *Oglivie v. State Board of Equalization,* 492 F. Supp. 446, 454 (D.N.D. 1980) *aff'd.,* 657 F.2d 204 (8th Cir. 1981), *cert. denied,* 454 U.S. 1086 (1981), the court, in holding that the "any other tax" provision applied to the imposition of *personal* property tax, held that the phrase *"any other tax" obviously means a tax not referred to in the preceding subsections.*

Using a similar analysis, the court in *Alabama Great Southern Railroad v. Eaglerton,* 663 F.2d 1036, 1040 (11th Cir. 1981), held that the "any other tax" provision applied to licensing taxes. In so holding, the court, in part, relied upon *Gordon v. Appeal Tax Court,* 44 U.S. (3 How.) 133, 147 (1845). In that case, this Court was called upon to interpret the phrase "and any further tax" in a state tax exemption. In interpreting the statute, this Court stated:

> "Not to impose any further tax or burden," when used in reference to some tax already imposed, means *no other tax besides that which reference is made.* Those words, so used, cannot be limited by a refinement upon the etymology of the word "any," out of or beyond the meaning in common discourse, to any like; and the words "any further tax," used with relation to some other tax, will, by common consent, as it has already been, be intended to *mean any additional tax besides that which is referred to and not any further like tax.*

(Emphasis added).

In context of Section 306, the "any other tax" provision cannot be read to authorize federal courts to review and redetermine state court evaluation of railroad property used for the purpose of *property tax* to

be levied, because property tax and ad valorem taxes are the type of taxes referred to in subsections (a), and (b), and (c), preceding the "any other tax" provision. Viewed as relating to "any other tax not referred to in the preceding subsections," the catchall provision cannot be viewed as providing further *property tax relief,* as property tax and ad valorem tax is referred to in the preceding sections.[6]

In sum, Section 306 does not, in clear unambiguous language, confer jurisdiction upon federal courts to review and redetermine the true market value which a state has established for railroad property. Any such intent must be inferred from statutory language, which does not directly address the issue. Construing the intent of Congress to materially alter the delicate balance in the relationship between federal and state government in an indirect manner, is not favored. A congressional intent to alter the federal-state balance is generally not to be infered, but must be found to be clearly stated. Because there is great doubt as to whether Congress intended such a result, resort to legislative history is appropriate; an analysis

[6] Burlington Northern would have this Court believe that construing Section 306 as not including federal court review of the State's determination of railroad property true market value, would leave railroads with no remedy, if their property was in fact overvaluated. Such, however, is not the case; railroads have state administrative and court remedies available to them. *See* discussion at Proposition V, *infra*. Additionally, in cases in which such administrative and court remedies prove to be other than plain, speedy and efficient, federal courts under the provisions of 28 U.S.C. §1341 would have jurisdiction to intercede. The record below simply does not demonstrate, nor is it alleged, that the administrative and state court remedies available to Burlington Northern in the area of valuation are not plain, speedy, or efficient.

of that history, as discussed in Proposition II, strongly militates against concluding that Congress intended such jurisdiction to be conferred.[7]

[7] In *Cass v. United States*, 417 U.S. 72 (1974), this Court was called upon to interpret the provisions of a federal statute which provided for readjustment pay for armed forces reserve officers being relieved from active duty. The statute in question [10 U.S.C. §687(a)] provided for such pay after service of "at least five years of continuous active duty." The statute also contained a "rounding off clause for those serving more than four and a half years, but less than five years." The question before the Court was whether the rounding off clause was applicable in determining eligibility, as well as in computing the amount of pay. In holding that the legislative history of the statute made it clear that the rounding provision applied only to computing amounts of pay, and not to determine eligibility, this Court commented upon the use of legislative history:

> [P]etitioners contend, that resort to legislative history is unnecessary and improper.
>
> Our view is to the contrary. The rounding provision is arguably subject to the interpretation given it by petitioners, but did Congress intend that provision to override as an explicit requirement of "at least" five years of service? We think the answer to that question is sufficiently doubtful to warrant or resort to extrinsic aids to determine the intent of Congress, which of course is the controlling consideration in resolving the issue before us. Moreover, the court has previously stated that "[w]hen aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which prohibits its use, however clear the words may appear on 'superficial examination,' " . . . . Such aid is available in this case and we decline to ignore the clear relevant history of Section 687(a).
>
> *Id.* at 76-79. (Footnote omitted).

In the case at hand, Burlington Northern argues that Congress, in prohibiting the taxation of rail transportation property at a higher ratio than other industrial commercial property, requires review and redetermination of rail transportation property valuation. The language of the statute leaves it sufficiently in doubt as to whether Congress intended such a result. Resort to available legislative history to resolve such doubt is, as was held in *Burlington Northern Railroad v. Lennen, supra*, appropriate.

PROPOSITION II

THE LEGISLATIVE HISTORY OF SECTION 306 DOES NOT EVIDENCE A CONGRESSIONAL INTENT TO VEST FEDERAL COURTS WITH JURISDICTION OVER RAILROAD VALUATION DISPUTES. RATHER, THE SECTION'S LEGISLATIVE HISTORY DEMONSTRATES THAT THE RAILROADS REPEATEDLY TOLD CONGRESS THAT RAILROAD PROPERTY OVERVALUATION WAS NOT A PROBLEM, AND THAT THE RAILROADS' PROPOSED BILLS DID NOT ADDRESS THAT ISSUE OF RAILROAD PROPERTY VALUATION.

Since the issuance of the "Doyle Report" in 1961,[8] Congress has addressed itself to a variety of complex problems facing the American railroads. One of many problem areas addressed was in the area of local taxation. For a period of fifteen years, Congress studied the various proposals drafted by the American Railroad Association dealing with local taxation, ultimately addressing the issue in Section 306 of the 4-R Act.[9]

Many hours of testimony and hearings, as well as reports dealing with the matter, demonstrate that Congress spent a great deal of time and effort grap-

[8] Special Study Group on Transportation Policies in the United States, Senate Comm. on Commerce, National Transportation Policy, S. Rep. No. 445, 87th Cong., 1st Sess. (1961).

[9] The various bills addressing this topic were: H. R. 7497, 87th Cong., 1st Sess. (1961); H. R. 786, 88th Cong., 1st Sess. (1963); H. R. 4972, 89th Cong., 1st Sess. (1965) (together wth twelve other identical bills); S. 2988, 89th Cong., 2d Sess. (1966); S. 927, 90th Cong., 1st Sess (1967); H. R. 1480, 90th Cong., 1st Sess. (1967); S. 2289, 91st Cong., 1st Sess. (1969); H. R. 16245, 91st Cong., 2d Sess., (1970); S. 2841, 92nd Cong., 1st Sess. (1971); S. 3945, 92nd Cong., 2d Sess. (1972); S. 1891, 93rd Cong., 1st Sess. (1973); H. R. 10979, 94th Cong., 1st Sess. (1975); S. 2718, 94th Cong., 1st Sess. (1975).

pling with the railroads' local taxation problems.[10]

An examination of Section 306's fifteen year legislative history reveals two recurring themes which are important to the consideration for the Court:

1. Railroad property overvaluation was not a problem; and

2. The proposed legislation did not concern itself with railroad valuation, but rather dealt with equalization, which was the railroad's problem.

These recurring themes in the legislative history strongly militate against the railroads' position that Section 306 deals with railroad valuation and confers jurisdiction upon federal courts to address railroad valuation issues.

In July, 1964, in one of the very first hearings to consider proposed legislation dealing with railroad taxation, Mr. James Ogden, Vice President and General Counsel of the Gulf, Mobile, and Ohio Railroad

[10] The following hearings and reports of the House and Senate dealt with the railroads' local taxation problems: *Tax Assessments on Common Carrier Property: Hearing on H.R. 736, H.R. 10169 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 88th Cong., 2d Sess. (1964); *Tax Assessments on Common Carrier Property: Hearings on H.R. 4972 Before the House Comm. on Interstate and Foreign Commerce*, 89th Cong., 2d Sess. (1966); *Discriminatory Taxation of Common Carriers: Hearings on S. 927 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 90th Cong., 1st Sess. (1967); S. Rep. No. 1483, 90th Cong., 2d Sess. (1968); *State Tax Discrimination Against Interstate Carrier Property: Hearing on S. 2289 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 91st Cong., 1st Sess. (1969); S. Rep. No. 630, 91st Cong., 1st Sess. (1969); *Common and Contract Carrier State Property Tax Discrimination: Hearing on H.R. 16245, and related bills Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 91st Cong., 2d Sess. (1970); *Surface Transportation Legislation: Hearing on S. 2363, Surface Transportation Act of 1971 and S. 1092, etc. Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 92nd Cong., 1st Sess. (1971, 1972); S. Rep No. 1085, 92nd Cong., 2d Sess. (1972); S. Rep. No. 595, 94th Cong., 2d Sess. (1976).

Company, speaking on behalf of the Association of American Railroads, informed Congress that the principal problem facing railroads in the area of local taxation was not valuation of railroad property, but rather discriminatory equalization. Vice President Ogden stated:

> *The principal problem in the matter of railroad assessments is not one of how to value a railroad.* In the hundred-year history of railroad taxation, the practice of valuing railroads for tax purposes has reached a substantial degree of refinement. Though not as simple as valuing a one-family dwelling, the method is neither incomprehensible nor even overly complicated. And it should be remembered that no greater effort is required to assess a railroad fairly and reasonably than is required to assess one unfairly and unreasonably. *The real problem is to determine how much of the valuation that has been found should be assessed, which, in turn, depends upon how much of the valuation of other property is assessed.* In other words, the problem is how to get the tax assessors in the several States to equalize the railroad's assessment with that of other property in the same taxing district.
>
> True equalization requires that each parcel of property be assessed at a figure which is the same proportion of its full value as the assessment of every other parcel of property in the same taxing district is of its full value.
>
> Railroad assessments are not equalized fairly and reasonably in numerous instances. Many tax assessors simply cannot or will not equalize railroad assessments with the assessments

> of other property even though both kinds of property are subject to the same tax levy. . . .

Tax Assessments on Common Carrier Property: Hearing on H.R. 736, H.R. 10169 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 88th Cong., 2d Sess. 18-19 (1964). (Emphasis added).

Some five years later, Phillip M. Lanier, counsel for Louisville and Nashville Northern Railroad Company, speaking on behalf of the Association of American Railroads, again informed Congress that *valuation was not the railroads' problem*, but that equalization was. In response to various questions from Senator Hanson regarding the basis on which railroad property was valued, Mr. Lanier first informed the Senator that the valuation formula varied from state to state, and was quick to add that valuation was not the railroads' problem, indicating that equalization was:

> MR. LANIER: The formula varies from State to State and *we are not dealing with the valuation question. This is not our problem. We speak only of the equalization of the tax rate.*

State Tax Discrimination Against Interstate Carrier Property: Hearing on S. 2289 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, 91st Cong., 1st Sess. 39 (1969). (Emphasis added).

The next year, in June of 1970, Mr. Lanier once again appeared, this time before a House committee, indicating again that the railroads' problem was in the area of equalization, not valuation, this time adding that the proposed legislation did not deal with valuation:

> MR. LANIER: *On the valuation — this bill would not deal with valuation being standard.*

The standards and methods of valuation that any State wishes to use would be totally unaffected by this legislation.

The short answer, if I may give it this way, and I think it will be clear, is that for valuation purposes different kinds of property put to different uses do require different methods of valuation. And the method of valuation applied to a railroad is quite different from that which is applied to a residence, a farm, factory, whatever it may be.

And that is appropriate because it is the way to get at the real value. There is nothing in this legislation — and we have no brief here to alter that — it is only in the area of equalization of the computed value that this legislation speaks. That is where our problem is.

Common and Contract Carrier State Property Tax Discrimination: Hearing on H.R. 16245, and related bills Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 91st Cong., 2d Sess. 138 (1970). (Emphasis added).

Then, in response to question from Representative Brock Adams, Mr. Lanier indicated that the proposed legislation "would come into play" after valuation was done:

> MR. [Brock] ADAMS [Representative from the State of Washington]: On page 2 of the bill it says, "The assessment" — which is what the tax collector comes in on — "for purposes of a property" — and that is all I am talking about here now — "owned or used by a common carrier at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other

> property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all other such property."
>
> That appears to me that you are taking into account both valuation and assessment.
>
> Mr. LANIER: I think I can answer it this way.
>
> Without regard to this legislation, assuming it is enacted, without regard to it the assessing authority for the railroads puts a value — a fair market value, true market value, the words means the same — on that railroad property and *the local assessor in the towns you refer to puts a true market value on the residences. After that is done, this bill would come into play.*

Id. at 139. (Emphasis added).

Finally, Mr. Lanier, using an example of a lot valued at $5,000.00, and one valued at $20,000.00, explained to Representative Adams what the railroads were seeking, indicating that *all the bill calls for is equalization of assessment, not equalization of valuation.*

> MR. ADAMS: But that help could not — if, for example, vacant property in that area with no buildings on it was assessed at, we will say, 100 by 100 lot, would be assessed at $5,000 — with a building on it, of course, valuation is going up — so then if your railroad property was assessed at more than that, under this bill — this is what I am asking you — I think you probably would have an automatic lawsuit that would say the value of a piece of real property with two rails on it and no other improvements should not be any higher than ei-

ther vacant property plus the value of the rails.

Unless, of course, you are using this unitary system that you mentioned which would take into account a lot of other factors, and since Mr. Smith is talking about real property and assessment and the bill, I am just asking you how it works.

MR. LANIER: Let us assume that the vacant lot is assessed at $5,000. That is a fair market value of that lot. Now, in Washington the equalization ratio is 50 percent.

MR. ADAMS: In Washington it is 50 percent. There is a fight going on because nobody is assessing at 50 percent. In some counties it is 20 and in others it is 32 and in others it is 56. If you have a lot of lumber in a particular county, a lot of trees, you get a low assessment rate —

MR. LANIER: Let's take the 50 percent then, so that the vacant lot actually carries a tax on $2,500. Now let us assume that a portion of the right-of-way of the railroad equivalent in area in that town to the vacant lot carries a value, fair market value determined by the State assessing authority of $20,000, if it is equalized at 50 percent, the tax goes against only $10,000. *That is all this bill requires, and that is all we ask for.*

Because we are speaking in terms of uniformity of the equilization ratio, not uniformity of the result in dollars of value or in dollars of tax, but only that once the fair market value is determined, the equalization ratio will be the same. And since you would have a 50 percent ratio in each instance, we would have absolutely no complaint and no grounds for complaint.

Id. at 139. (Emphasis added).

Mr. Lanier was not the only railroad representative who told Congress the proposed legislation did not deal with valuation. In 1967, appearing before a committee of the United States Senate, Dr. Harold M. Groves, appearing on behalf of the railroads and supporting the legislation, stated that he thought much of the railroads' local taxation problem grew out of imperfections in the equalization process, indicating that the proposed legislation dealt with that process, and not valuation or the apportionment. Dr. Groves stated:

> Some of the discrimination against railroads is deliberate, but I believe much of it is *de facto growing out of imperfections in the equalization features of property tax laws.* The proposed legislation may not be broad enough to eliminate all discrimination, but it would make a good start in eliminating that part of it which is procedural . . . .
>
> . . . . . Railroads have a vital stake in *three aspects of property tax:* fair *valuation;* fair *apportionment;* and fair *application of rates. The first two involve difficult conceptual problems, but the last (with which this proposed legislation deals) is a matter of simple integrity.*

Discriminatory Taxation of Common Carriers: Hearings on S.927 Before the Subcomm. on Surface Transportation of the Senate Comm. of Commerce, 90th Cong., 1st Sess. 54 (1967). (Emphasis added).

These statements and testimony of railroad representatives indicating that railroad property valuation was not part of their local taxation problems, and that

the proposed legislation did not deal with valuation, were taken by other participants in the legislative process as a statement of the railroad's position that they were not seeking passage of the legislation in order to confer jurisdiction upon federal courts to deal with valuation issues. For example, in his letter to Chairman Friedel, Charles Otterman, Chief Counsel for the California Board of Equalization, stated:

> It also appeared to me that what the railroads were saying is that they wanted to have discriminatory assessment ratio practice struck down by the federal courts and that it was not their intention to intrude the federal courts into fact of adjudication as to the true market value of railroad property and local assessed property for the purpose of assessing.

Common and Contract Carrier State Property Tax Discrimination: Hearing on H.R. 16245, and related bills Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 91st Cong., 2d Sess. 93 (1970).

In a similar vein, the Multistate Tax Commission, in its letter to Senator Vance Hartke, stated in their resolution that:

> In view of the *stated position of the carriers that they have never supported the bill in hopes of using it to bring a pure valuation case in the federal courts*, the question of true market value of carrier property should not be a subject for federal court action under the bill.

State Tax Discrimination Against Interstate Carrier Property: Hearing on S. 2289 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, 91st Cong., 1st Sess. 111 (1969). (Emphasis added).

Echoing the railroad representatives' comments, the Senate Report on Senate Bill 927 repeated that the use of true market value in the statute was not meant to establish a standard for determining value, indicating that the statutory standard was one to which values that had already been determined must be compared. The report provided at Appendix B:

> The proportion of "true market value" at which assessments are finally fixed varies amoung the several States. In some States the law requires assessment at true market value, in others at 60 percent thereof, in other at 35 percent, et cetera.
>
> Railroad property in most of the States is valued and assessed as a unit; that is, the whole system as it exists in 8, 10, or 15 States is valued; this value is distributed among the several States on the basis of recognized allocation factors; and then, in turn, the value in a particular State is apportioned among the several taxing districts in that State on the basis of mileage. In other words, when railroads are assessed as a unit the total value is first determined by adding the assessed value of individual items that make up the railroad plant.
>
> As to the few States in which railroad property is locally assessed there is no specific information concerning the assessment methods.
>
> *S. 927 does not suggest or require a State to change its assessment standards, assessment practices, or the assessments themselves.* It merely provides a single standard against which all affected assessments must be measured in order to determine their relationship to each other. *It is not a standard for determining value; it is a standard to which values*

> *that have already been determined must be compared.* This standard is "true market value" (also the generally accepted standard for assessment purposes) and *the requirement is that carrier property be assessed at the same proportion of such value as the proportion at which all other property subject to the same tax rates is assessed.*

S. Rep. No. 1483, 90th Cong., 2d Sess. 10 (1968) (Emphasis added).

The above legislative history demonstrates that those who proposed and supported the legislation, the nation's railroads and their Association, and those appearing on their behalf, repeatedly told Congress that valuation of railroad property was not a problem, and that the proposed legislation did not address railroad property valuation. Despite this, the railroads would have this Court believe that Congress, in its role as problem solver, addressed a problem that they were told did not exist.

In support of this position, Burlington Northern asks this Court to look, not at the statements and testimony of those who supported the legislation, but rather at the statements of those who opposed it (Pet. Br. at 25).[11]

[11] In addition to the statements of opponents of the bill, Burlington Northern, in one instance, relies upon the testimony of Broley E. Travis (Pet. Br. at 25, n. 38). Mr. Travis, a retired California tax assessor hired by the railroad to testify in support of the legislation, expressed no opinion as to the intent of Congress. Rather, he indicated that as a technician, examination of assessment would have to start his evaluation. There is little or no reason to assume that Congress adopted Mr. Travis' technical view, particularly in light of the Committee's report (S. Rep. No. 630, 91st Cong., 1st Sess. (1969)), which indicated that "true market value" as used in the bill was not meant to be a standard for determining value, and referred to the value determined by the state assessor. In point of fact, the court in *Burlington Northern Railroad v. Lennen*, 573 F. Supp. 1155, 1162-63 (D. Kan. 1982), *aff'd.*, 715 F.2d 494 (10th Cir. 1983), *cert. denied*, 467 U.S. 1230 (1984), found that the Committee had rejected Mr. Travis' technical view.

This Court has observed, reliance upon the views of opponents of legislation, in interpreting a statute, is misplaced and unreliable:

> [W]e have often *cautioned against the danger, when interpreting a statute, of reliance upon the views of its legislative opponents. In their zeal to defeat a bill, they* understandably tend to *overstate its reach.* "The fears and doubts of the opposition are no authoritative guide to the construction of legislation. *It is the sponsors that we look to when the meaning of the statutory words is in doubt."*

NLRB v. Fruit & Vegetable Packer, 377 U.S. 58, 66 (1964). (Emphasis added). *See also Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 203, n. 24 (1976) [objections to a draft version of § 10(b) of the Securities and Exchange Commission Act of 1934, 15 U.S.C. § 78; (b), by representatives of the securities industry who opposed the statute were "entitled to little weight."].

The statements of those supporting Section 306 indicated that valuation was not part of their local taxation problem, but that equalization was. The sponsors of Section 306 further indicated that the proposed legislation did not address valuation of railroad property. It is extremely doubtful that Congress, apprised of these facts, intended that Section 306 conferred jurisdiction upon federal courts to address railroad valuation issues. The proponents of the bill asked for no such relief; Congress has expressed no clear intent to grant such relief; and the legislative history contains no plain indication that such was Congress's intent. On the contrary, the comments and testimony of those sponsoring the legislation, the nation's railroads, strongly militate against such an interpretation.

PROPOSITION III

EVEN IF SECTION 306 WERE HELD TO ENCOMPASS OVERVALUATION DISCRIMINATION, HONEST DISAGREEMENT OVER RAILROAD PROPERTY VALUATION DOES NOT CONSTITUTE DISCRIMINATION. RATHER, UNDER FEDERAL COMMON LAW, OVERVALUATION MUST BE FRAUDULENT OR INTENTIONAL TO SUPPORT A CLAIM OF DISCRIMINATION.

In *Rowley v. Chicago & Northwestern Railway*, 293 U.S. 102, 111 (1934), the Chicago & Northwestern Railway Company brought suit in federal district court against several Wyoming county treasurers, asking the federal district court to enjoin collection of part of the taxes levied upon their railroad property. Wyoming law required that all taxable property be assessed on the basis of its actual value. The railroad's complaint rested upon the allegation that the state had overvalued their property. This Court, holding that the railroad had not proven its discriminatory claim, held that to support a claim of discriminatory overvaluation, the railroad must show that overvaluation of its property was intentional or, the equivalent of fraudulent purpose:

> There is nothing in this record to suggest any lack of good faith on the part of the board. *Overvaluation resulting from error of judgment will not support a claim of discrimination. There must be something that amounts to an intention, or the equivalent of fraudulent purpose, to disregard the fundamental principles of uniformity.*

293 U.S. at 111. (Emphasis added).

See also Great Northern Railway v. Weeks, 297 U.S. 135, 139 (1936), and *Charleston Federal Savings &*

Loan Association v. Alderson, 324 U.S. 182, 190-91 (1945).

This Court reached similar results in *Chicago Great Western Railway v. Kendall*, 266 U.S. 94, 98-99 (1924) ("It is not enough, in these cases, that the taxing officials have merely made a mistake. It is not enough that the court, if its judgment were properly invoked, would reach a different conclusion as to the taxes imposed. *See also Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 447 (1923); and *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 353 (1917). [12]

Congress, in enacting Section 306, is presumed to have knowledge of the law, both statutory and decisional, *Director v. Perini North River Associates*, 459 U.S. 297, 319 (1983) ("We may presume 'that our elect representatives, like other citizens, know the law. . . .' "); *Cannon v. University of Chicago*, 441 U.S. 677, 696-97 (1979) ("It is always appropriate to assume that our elected representatives, like other citizens, know

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[12] In attempting to persuade the court that intention need not be shown in order to prove discriminatory overvaluation, amicus curiae, the United States, relies on four recent decisions of this Court, *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 270- 71 (1984); *Washington v. United States*, 460 U.S. 536, 544 (1983); *Memphis Bank & Trust Co. v. Garner*, 459 U.S. 392, 397 (1983); and *Minnesota v. Clover Leaf Creamery Co.*, 449 U.D. 456, 471 n. 15 (1981). None of these cases are controlling, as none of these cases are discriminatory overvaluation cases. The *Bacchus* case deals with an excise tax exemption which was found to constitute "economic protectionism," and found to be discriminatory in both purpose and effect — discriminating in favor of local products. The *Washington* case dealt with the propriety of imposing a sales tax on a federal government contractor; and the *Clover Leaf Creamery* case dealt with the propriety of a Minnesota statute prohibiting the retail sale of milk in plastic nonreturnable nonrefundable containers, while permitting such sales in other nonreturnable, nonrefundable containers, such as paperboard milk cartons. The *Memphis Bank* case dealt with whether a state sales tax imposed on interest earned by a bank on various federal obligations is proper in light of the federal government's constitutional immunity from taxes. None of these cases dealt with discriminatory overvaluation of property for tax purposes, and cannot be said to have changed the federal common law in such area.

the law; . . . ."); and Cary v. Curtis, 44 U.S. (3 How. 236, 240 (1845) ("Such was the law as announced from this Court, and Congress must be presumed to have been cognizant of its existence; . . . they must be supposed to have been equally cognisant[sic] of the effects and tendencies of this court's decisions upon the collection of public revenue.").

Thus, in enacting Section 306, Congress was presumed to have been aware of the common law that overvaluation, absent intention or fraud, does not constitute discrimination. Any intent to modify or alter this common law cannot be presumed, as statutes in derogation of common law are strictly construed, and not presumed to alter common law. *E.g., Herd & Co. v. Karwill Machinery Corp.*, 359 U.S. 27, 304-05 (1959) ("Any such rule of law, being in derogation of the common law, must be strictly construed, for '[n]o statute is to be construed as altering the common law, further then its words import. It is not to be construed as making any innovation upon the common law which it does not fairly express.' "); and *Ross v. Jones*, 22 Wall. 576, 592 (1874).

PROPOSITION IV

EVEN IF SECTION 306 GIVES A FEDERAL COURT JURISDICTION TO ENTERTAIN CERTAIN CLAIMS OF OVERVALUATION WITH DISCRIMINATORY INTENT, THE HOLDING OF THE TENTH CIRCUIT THAT THE MATERIALS PRESENTED BY BURLINGTON NORTHERN DID NOT PRESENT A LEGITIMATE ISSUE UNDER SECTION 306, AND THAT DISCRIMINATORY INTENT WAS REQUIRED BEFORE A FEDERAL COURT HAD JURISDICTION TO CONDUCT A HEARING OVER A VALUATION CLAIM, IS CONSISTENT WITH CONSTITUTIONAL JURISPRUDENCE REGARDING DISCRIMINATION.

Burlington Northern also complains that the district court and the Tenth Circuit erred when it ruled that the case should be dismissed because of the failure of Burlington Northern to set forth sufficient facts that would justify invoking the court's jurisdiction under Section 306.

As noted previously, the State contends that there is nothing in the statutory language of Section 306 or its legislative history to support the view that this statute was intended to grant federal courts jurisdiction to hear claims alleging overvaluation with discriminatory intent. However, even if such jurisdiction existed, Burlington Northern failed to allege or present facts which would constitute discrimination sufficient to invoke such jurisdiction.

The Tenth Circuit held that the federal district court had jurisdiction of a claim that a railroad property was being taxed with a different assessment percentage than other similar commercial property. That court also reaffirmed its holding in *Burlington Northern Railroad v. Lennen*, 715 F.2d at 498, stating that a federal district court could hear also a claim regarding valuation if the railroad made a strong showing of a purposeful overvaluation with discriminatory intent (Pet. App. 3a).

The Tenth Circuit stated that since Burlington Northern did not allege knowledge of any state officials' remarks regarding an intent to discriminate in valuation, or any procedure that on its face demonstrated valuation discrimination against railroads, the complaint had been properly dismissed (Pet. App. 3a).

Both the district court and Tenth Circuit found that Burlington Northern proposed to do nothing more than dispute the method used to determine

Burlington Northern's system value (Pet. App. 4a; 13a-17a). The Tenth Circuit observed that Burlington Northern's 1982 assessment was calculated differently than previous figures as a part of a new system, and that its expert's testimony simply established there was merely a difference of opinion over what the true market value was (Pet. App. 4a). That court held that, "[v]iewed in the light most favorable to Burlington Northern, the materials presented established the existence of a legitimate question over the actual market value of Burlington Northern property, but not a legitimate question regarding overvaluation with discriminatory intent." (Footnote omitted) (Pet. App. 5a).

The Tenth Circuit's ruling set forth the test for evaluating a claim pursuant to a motion for summary judgment. Fed. R. Civ. P. 56; *Celotex Corporation v. Catrett*, ____ U.S. ____ , 106 S.Ct. 2548 (1986). This is the appropriate standard when material that supplements a motion to dismiss has been considered. Fed. R. Civ. P. 12(b).

Furthermore, objective evaluation of public officials' intent is preferrable when subjective inquiry into those persons' motives would have significant societal costs. *See Harlow v. Fitzgerald*, 457 U.S. 800, 816-20 (1982).

The rule of *Lennen* regarding intent is also consistent with equal protection jurisprudence under the Fourteenth Amendment. In *Personnel Administration of Massachusetts v. Feeney*, 442 U.S. 256, 272 (1979), this Court held that "even if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional only if that impact can be traced to a discriminatory purpose." *See also Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265 (1977) ("Proof of racially discriminatory intent or purpose is required to

show a violation of the Equal Protection Clause") and *Washington v. Davis*, 426 U.S. 229 (1976).

The Court in *Arlington Heights*, 429 U.S. at 265, noted that this principle was well-established in a variety of contexts, citing *Keyes v. School District No. 1*, 413 U.S. 189, 208 (1973) (schools); *Wright v. Rockerfeller*, 376 U.S. 52, 56-57 (1964) (election districting); *and Akins v. Texas*, 325 U.S. 398, 403-04 (1945) (jury selections). *See also Batson v. Kentucky*, ____U.S. ____, 106 S.Ct. 1712 (1986) (in criminal case where black jurors were pre-emptorily excused, question was whether "in these cases, as in any case alleging a violation of the Equal Protection Clause, was whether the defendant had met his burden of proving purposeful discrimination on the part of the State.").

Significantly, in *Fair Assessment in Real Estate v. McNary*, 454 U.S. 100 (1981) one of the claims was that taxpayers who successfully appeal their property assessments were specifically targeted for reassessment the next year. *Id.* at 106. As noted previously, this Court held that none of the taxpayers' allegations stated a claim under 42 U.S.C. § 1983.

Therefore, in light of the evidence Burlington Northern sought to present, the State contends that the Tenth Circuit was correct in holding that Burlington Northern was not entitled to a hearing on its contentions.

PROPOSITION V

THE INTERPRETATION OF A CONGRESSIONAL GRANT OF FEDERAL DISTRICT COURT JURISDICTION MUST BE VIEWED AGAINST THE BACKDROP OF FEDERALISM; IN THE ABSENCE OF A CLEAR AND EXPRESS GRANT OF FEDERAL JURISDICTION, PRINCIPLES OF COMITY BAR INJUNCTIVE RELIEF AGAINST STATE REVE-

NUE OFFICIALS.

Burlington Northern contends that Section 306 grants a federal district court jurisdiction to issue an injunction against a state tax collection agency to resolve disputes between railroads and the State overvaluation of railroad property.[13] The State responds that in view of the unclear language of Section 306, the principles of federalism, the judicial precedents of this Court, previous legislation by Congress, and the Eleventh Amendment[14] such an extreme use of federal judicial power and its attendant intrusion into a vital state governmental function is not justified, and is barred by the doctrine of comity.

[13] In *Atchison, Topeka and Santa Fe Railway v. Board of Equalization*, 795 F.2d 1442, 1446 (9th Cir. 1986), cited by both the Petitioner and the Solicitor General in support of their position before this Court, the Ninth Circuit held that §11503 "authorizes federal district courts to hear claims of *specific instances of overvaluation*. . . ." (Emphasis added).

[14] The Eleventh Amendment, while not a bar to the present action, has relevance since it was intended to prevent an entity from using a federal court to sue a state. *Hans v. Louisiana*, 134 U.S. 1 (1890). The Eleventh Amendment is a principle of sovereign immunity which is a constitutional limitation on the federal judicial power established in U.S. Const. art. III. *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 98 (1984).

Generally, a suit is against a sovereign " 'if the judgment sought would expend itself on the public treasury or domain, or " 'interfere with the public administration.' " *Pennhurst*, 465 U.S. at 101, n. 11.

Under the Fourteenth Amendment, Congress has the power to abrogate Eleventh Amendment immunity. *Pennhurst, Id.* at 99. But, although there was a shift in federal-state balance caused by the enactment of the Fourteenth Amendment, *see Fitzpatrick v. Bitzer*, 427 U.S. 445, 454-55 (1976), the present case does not present such a case since it arises under the Commerce Clause, and not the Fourteenth Amendment.

Furthermore, while *Ex parte Young*, 209 U.S. 123 (1908) held that a state official may be enjoined to prevent unconstitutional actions, "the theory of Young has not been provided an expansive interpretation." *Pennhurst*, 465 U.S. at 102. Also, this Court in *Pennhurst* noted that while the *Young* doctrine rests on the need to promote the vindication of federal rights, "the need to promote the supremacy of federal law must be accommodated to the constitutional immunity of the States." *Id.* at 105.

A. THE PRINCIPLE OF COMITY AS SET FORTH IN *FAIR ASSESSMENT IN REAL ESTATE V. McNARY* PREVENTS A FEDERAL COURT FROM ENJOINING STATE TAX OFFICIALS AND SETTING THE STATE TAX BURDEN OF A CORPORATION WITHOUT A CLEAR CONGRESSIONAL DIRECTIVE AUTHORIZING AN INTRUSION INTO SUCH AN IMPORTANT FUNCTION OF A SOVEREIGN.

Judicial interpretation of the intent of Congress in enacting Section 306 must be viewed in the context of long standing federal principles. The starting point of this inquiry is this Court's decision in *Fair Assessment in Real Estate Association v. McNary*, 454 U.S. 100 (1981).

In *McNary*, this Court held that a taxpayer's action for damages under 42 U.S.C. § 1983, alleging unconstitutionality in the administration of a state tax system, was barred by principles of comity. The taxpayer had contended that there was a difference in the tax assessment of property, depending on whether it had new improvements on it. The majority opinion rejected the argument of the dissent that it was 28 U.S.C. § 1341 that prohibited the action. The Court stated that federal court deference in state tax matters was not limited to § 1341, because "the principle of comity which predated the Act was not restricted by its passage." *Id.* at 110. *See also Younger v. Harris*, 401 U.S. 37, 44 (1971), where this Court held that notions of comity were even a more vital consideration than principles of federal equity jurisdiction in restraining federal courts from interfering in criminal prosecutions.

The Court in *McNary* quoted *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 522 (1981), which noted

that § 1341 was a vehicle to limit federal court interference "with so important a local concern as the collection of taxes." 454 U.S. at 110. *See also Tully v. Griffin, Inc.*, 429 U.S. 68, 73 (1976) and *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 298 (1943). In *Rosewell*, the Court noted that "it was a longstanding rule of federal equity to keep out of state tax matters as long as a 'plain, adequate and complete remedy' could be had at law." 450 U.S. at 525.

In *Great Lakes* the Court stated that rules of federal equity require that a federal court cannot grant declaratory relief when the state legislature has provided a state mechanism for recovery of the tax. 319 U.S. at 300-01. The Court held that a taxpayer could not obtain a declaratory judgment regarding the validity of the tax, despite the fact that § 1341 speaks only of injunctive relief. *Id.* at 299.

Tax collection is vital to the existence and stability of local government. Obviously, expenditures of state government are totally dependent upon the revenue gathering apparatus. If federal courts are required to sit as "state assessment boards," *Burlington Northern Railroad v. Lennen*, 715 F.2d 498 (10th Cir. 1983), *cert. denied*, 467 U.S. 1230 (1984), regarding "specific instances of overvaluation," *Atchison, Topeka and Santa Fe Railway*, 795 F.2d at 1446, the interference with state government is apparent.

In *Lynch v. Household Finance Corp.*, 405 U.S. 538, 542, n. 6 (1972), a case involving the interpretation of 28 U.S.C. §1343(3) jurisdiction, this Court, after discussing previous Supreme Court decisions and two affirmances of dismissals of constitutional challenges to the collection of state taxes, brought pursuant to § 1343(3), stated:

> All of these cases involved constitutional challenges to the collection of state taxes. Congress has treated judicial interference

> with the enforcement of state tax laws as a subject governed by unique considerations and has restricted federal jurisdiction accordingly: [cites 28 U.S.C. § 1341]. We have repeatedly barred anticipatory federal adjudication of the validity of state tax laws. *Dows v. City of Chicago*, 11 Wall. 108; *Matthews v. Rodgers*, 284 U.S. 521; *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293; *see also, Perez v. Ledesma*, 401 U.S., at 126-127, n. 17 (opinion of Brennan, J.). The decisions cited by appellees may, therefore, be seen as consistent with congressional restriction of federal jurisdiction in this special class of cases and with longstanding judicial policy.

In *Fair Assessment in Real Estate v. McNary*, 454 U.S. 100 (1981), cited previously, this Court cited *Dows v. Chicago*, 11 Wall. 108, 110 (1871), quoting Justice Fields' description of what this Court called "the vital and vulnerable nature of the state tax systems," as follows:

> "It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public."

454 U.S. at 102.

In *Rosewell v. LaSalle National Bank*, 450 U.S. at 525, n. 33, the Court noted that "even where the Tax Injunction Act would not bar federal-court interference in state tax administration, principles of federal

equity may nevertheless counsel the with holding of relief."

Significantly, in *Rosewell* the Court held that 28 U.S.C. § 1341 involved a cutting back of federal equity jurisdiction. *Id.* at 526. Therefore, the cases of *Dows v. Chicago, supra, Matthews v. Rodgers,* 284 U.S. 521 (1932), and *Great Lakes Dredge & Dock Co. v. Huffman,* 319 U.S. 293 (1943), all of which emphatically reject federal equity involvement in state tax matters where an adequate state remedy exists, are relevant to the present case.

Potential disruption of state governmental affairs by federal courts has always been a concern of this Court. *See Pennhurst State School and Hospital v. Halderman,* 465 U.S. 89, 106 (1984) ("[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law."); *San Antonio School District v. Rodriguez,* 411 U.S. 1, 58 (1973) and *Milliken v. Bradley,* 433 U.S. 267, 291 (1977).

This concern is greatest when the intrusion is by the use of federal injunctive power. In *City of Los Angeles v. Lyons,* 461 U.S. 95 (1983) the Court, in holding that a federal court had no jurisdiction to enjoin the police from using chokeholds in absence of a real and immediate threat, noted:

> In exercising their equitable power federal courts must recognize '[t]he special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.

Id. at 112.

See also Rizzo v. Goode, 423 U.S. 362 (1976) and *O'Shea v. Littleton,* 414 U.S. 488 (1973).

The State in the present case contends that the injunctive relief contemplated by Burlington Northern holds the potential for the disruption of its tax collection operation.[15]

Lyons, Rizzo, and *O'Shea* were actions brought pursuant to the Ku Klux Klan Act of 1871, 42 U.S.C. §1983. All three concerned alleged violations of constitutional rights that involved practices that both the Fourteenth Amendment and 42 U.S.C. §1983 were designed to protect citizens from. *See Adickes v. S. H. Kress & Co.,* 398 U.S. 144 (1970); and *Monroe v. Pape,* 365 U.S. 167 (1961). As noted previously, 42 U.S.C. § 1983 clearly provides for equitable relief.[16] Since this Court has held that the principle of federalism restrains the use of federal injunctive relief in matters involving personal liberties, the same principle should guide the Court in determining whether the ambiguous statute at hand, 49 U.S.C. § 11503, should be available to propel federal courts into railroad valuation cases.[17] *Cf. Edwards v. California,* 314 U.S. 160,

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[15] The present case involves the 1982 valuation of the Burlington Northern's railroad property. A similar suit challenging the 1983 assessment has been stayed by the same court pending the outcome of this case. *Burlington Northern Railroad v. Oklahoma Tax Commission,* No. 83-419-R (W.D. Okla. Apr. 29, 1985) *See* J.A. 125-29. On December 16, 1986, Burlington Northern and two other railroads filed another action in the same court. Burlington Northern alleged that its 1986 assessment had been overvalued by 45.1% *Burlington Northern Railroad v. Oklahoma Tax Commission,* No.86-2726-W (W.D. Okla. Dec. 16, 1986).

[16] 42 U.S.C. § 1983 states: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, *suit in equity,* or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia." (Emphasis Added).

[17] 42 U.S.C. § 1983 cannot be used to enjoin the practices mentioned above despite the fact that it is an exception to the Anti-Injunction Act, 28 U.S.C. § 2283. *Mitchell v. Foster,* 407 U.S. 225 (1972).

177 (1941) (Douglas, J., concurring) ("[T]he right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines."); and *United States v. Carolene Products Co.*, 304 U.S. 144, 152, n. 4 (1938).

In *Burlington Northern Rail[illegible]d v. Lennen*, 715 F.2d at 497, the Tenth Circuit noted that there is an "absence of specific statutory direction" in Section 306. The lack of clarity as to the extent of federal court jurisdiction regarding the assessment of railroad property makes federalism principles particularly significant. "[W]hen a statute is ambiguous, 'construction should go in the direction of constitutional policy." *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 134 (1974). *Cf. Aloha Airlines v. Director of Taxation*, 464 U.S. 7, 14, n. 10 (1983) [the Court notes that "unambiguous" proscription in 49 U.S.C. § 1513(a) compelled Court to conclude that federal statute was intended to preempt state taxation statute].

In his amicus brief the Solicitor General contends that "Congress plainly intended the unusual degree of interference with the ordinary administration of state property tax collection that Section 306 by its terms authorizes." (Br. at 23). Therefore, the Solicitor General concedes that if his position regarding federal equitable jurisdiction is sustained, interference will be extensive. The Solicitor General attempts to show that the intrusion can be minimalized by such devices as random-sampling and does not require "tedious item-by-item investigation" (Br. at 24-25). However, the statute does not contain such limitations, and the reference to such in Section 306(c) concerns nonrailroad commercial and industrial property.

Furthermore, another so-called minimalization factor referred to by Burlington Northern, the 5% ratio in Section 306(c) (Pet. Br. at 21; *see also* Solicitor

General's Brief at 25), would not stop railroads from asserting excessive valuation claims.[18]

Disputes over valuation could well be reduced to arguments over the value of each individual asset of a railroad, as well as disagreements over a variety of other issues, such as types of depreciation or the weight to be given various methods of valuation. In the present case Burlington Northern's valuation of its system differed dramatically with the valuation of such by the State (Pet. App. 31a-32a).

If Burlington Northern's position were adopted, the value of the railroad property would be determined by a federal judge after listening to expert witnesses from each side.[19] Therefore, an unelected, life-appointed federal judge could act as an assessor using his or her equitable powers to set the state tax burden of each railroad operating in a state. *Cf. Moses Lake Homes v. Grant County*, 365 U.S. 744 (1961). It is hard to imagine a process more at odds with the principles of American federalism.[20]

The State contends that the Tenth Circuit and the district court's holdings in the present case and the Tenth Circuit's previous reasons in *Lennen*, are what Congress intended in enacting Section 306. Both courts noted that in 1982 the State equalized assess-

[18] As noted previously, (p. 45, n. 15) Burlington Northern is contending in a new federal lawsuit that its 1986 tax assessment was 45.1 higher than it should have been.

[19] Burlington Northern concedes in its brief that its interpretation of §11503 "authorize[s] federal court fact finding as to true market value." (Pet. Br. at 18). *See also Burlington Northern Railroad v. Bair*, 766 F.2d 1222, 1225-26 (8th Cir. 1985).

[20] Another important consideration is that, if valuation challenges would be allowed, the time and energy of state tax officials would be consumed by the defending of their valuation process. This Court has found that social costs such as these are relevant in determining the scope of 42 U.S.C. §1983. *See Mitchell v. Forsyth*, ___ U.S. ___, 105 S.Ct. 2806, 2815 (1985); *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982).

ment percentages, and is now using the same assessment ratio on railroad property, 10.87%, as is used to assess other commercial and industrial property in Oklahoma (Pet. App. 4a and 13a). *Cf. Oglivie v. State Board of Equalization*, 657 F.2d 204 (8th Cir. 1981), *cert. denied*, 454 U.S. 1086 (1981) (court upholds the district court determination that personal property of the railroads should be exempt from taxation and be subject to an assessment ratio of 13.24%, which is the way other commercial and industrial property were treated); and *Arkansas-Best Freight System, Inc. v. Cochran*, 546 F. Supp. 904, 909 (M.D. Tenn. 1981) (Tennessee taxing statutes requiring a higher assessment rate to be applied to motor carrier property than the rate applied to commercial and industrial property generally violated 49 U.S.C. § 11503a, which is virtually identical to Section 306).

In *Moses Lake Homes v. Grant County*, 365 U.S. 744, 752 (1961), the Court held that where a county assessed taxes against leasehold estate of lessees of the federal government on the basis of the full value of the buildings and improvements, while other leaseholds were assessed at full market value, the taxes were discriminatory. This Court held that the Court of Appeals' ruling directing the district court to decree a valid tax, for the invalid one the State had tried to exact, was improper, stating:

> Federal courts may not assess or levy taxes. Only the appropriate taxing officials of Grant County may assess and levy taxes on these leaseholds, and the federal courts may determine, within their jurisdiction, only whether the tax levied by those officials is or is not a valid one.

Id. 752. *See also Phillips Chemical Co. v. Dumas Independent School District*, 361 U.S. 376, 385 (1960) (while a state cannot discriminate against federal govern-

ment or its lessee regarding taxation, the state's power to classify is extremely broad and its discretion is limited only by constitutional rights and by the doctrine that a classification may not be palpably arbitrary).

B. SINCE BURLINGTON NORTHERN HAS AN ADEQUATE REMEDY AT STATE LAW, IN ABSENCE OF CLEAR CONGRESSIONAL EXPRESSION TO THE CONTRARY, IT SHOULD BE REQUIRED TO PURSUE ITS VALUATION DISPUTES IN A STATE ADMINISTRATIVE FORUM.

Burlington Northern has the right to challenge the valuation of its property administratively before both the Tax Commission and the State Equalization Board. *See* Okla. Stat. Ann. tit. 68 §§ 2454 and 2467 (West Supp. 1987). It can then appeal these decisions to the Oklahoma Supreme Court. *Tulsa Classroom Teachers Association v. State Equalization Board*, 601 P.2d 99, 102 (Okla. 1979); Okla. Stat. Ann. tit. 75, §§ 301-326 (West 1976 & Supp. 1987). Burlington Northern has not contended that this process is in any way procedurally inadequate, which was noted by the Tenth Circuit in its opinion (Pet. App. 5a, n.1). *Cf. California v. Grace Brethren Church*, 457 U.S. 393 (1982).

In *Alabama Public Service Commission v. Southern Railroad*, 341 U.S. 341 (1951), a case in which this Court held that the Johnson Act, 28 U.S.C. § 1342, did not apply, this Court held that federal equitable jurisdiction should still not be exercised. In that case, where the railroad contended that an Alabama law which prohibited discontinuance of certain railroad passenger services, the Court held that since "adequate state court review of an administrative order based upon predominately local factors is available to [the railroad], intervention of a federal court is not

necessary for the protection of federal rights." *Id.* at 349.[21]

In Burford v. Sun Oil Co., 319 U.S. 315 (1943) this Court held that the federal district court should have dismissed the complaint in a case involving proration orders in Texas oil fields. Professor Wright has noted that this case was decided "on the ground that the issues involved a specialized aspect of a complicated regulatory system of state law." C. Wright, The Law of Federal Courts, § 52 (1984 ed.). *See also Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985) (the Court states that FDA is better equipped than the courts to deal with the variables involved in its duties); and *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 28-29 (1959) (eminent domain is intimately involved with sovereign perogative and abstention is proper based partly on "[t]he special nature of emeinent domain. . . .").

The State contends that, in view of the complex and specialized nature of valuation and subsequent taxation, the state administrative process is the appropriate forum for determining tax liability.

In *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 105 S.Ct. 3108 (1985), this Court held that the plaintiff could not bring a 42 U.S.C. § 1983 action based upon an alleged violation of the Just Compensation Clause if the state provides an adequate procedure for seeking just compensation. *Id.* at 3121. *See also Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984) (equitable relief was not available to enjoin an alleged taking of private property for a public use when a suit for compensation can be brought against the sovereign subsequent to the taking).

[21] Significantly, the Court noted that the "interblending of the interstate and intrastate operations does not deprive the states of their primary authority over intrastate transportation in the absence of congressional action supplementing that authority." Id. at 345.

In *Williamson County*, the Court cited *Parratt v. Taylor*, 451 U.S. 527 (1981) and *Hudson v. Palmer*, 468 U.S. 517 (1984), which held that when a person is deprived of property through a random and unauthorized act by a state employee, whether intentionally or negligently, the Constitution is satisfied by a meaningful state postdeprivation remedy and an action under § 1983 will not lie. *Williamson County*, 105 S.Ct. at 3121-22.

In the present case, since there is an adequate remedy at state law regarding Burlington Northern's valuation disagreement with the State, federal court jurisdiction should not exist in the absence of a clear statute to the contrary.

Furthermore, any alleged violation of federal constitutional law can be reviewed by means of a petition for a writ of certiorari to this Court. *See Hooper v. Bernalillo County Assessor*, 105 S.Ct. 2862 (1985) (New Mexico law giving a $2,000 tax exemption to Vietnam veterans residing in New Mexico since May 8, 1976 violated equal protection); and *Arizona Public Service Co. v. Snead*, 441 U.S. 141, 146 (1979).

Significantly, federal law also prohibits injunctions being issued against its taxation process. 26 U.S.C. § 7421. Even a suit for a refund cannot be commenced until administrative steps have been completed. 26 U.S.C. § 7422; 26 C.F.R. § 601.105 (1986). This Court has noted that § 7421 was "written against the background of general equitable principles disfavoring the issuance of federal injunctions against taxes, absent clear proof that available remedies at law were adequate." *Bob Jones University v. Simon*, 416 U.S. 725, 742, n. 16 (1974).

CONCLUSION

The State requests this Court to affirm the judgment of the Court of Appeals for the Tenth Circuit.

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